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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,158	12/31/2001	Luke K. Surazski	062891.0581	9348

5073 7590 12/08/2006

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EXAMINER

AHMED, SALMAN

ART UNIT PAPER NUMBER

2616

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/039,158

Applicant(s)

SURAZSKI ET AL.

Examiner

Salman Ahmed

Art Unit

2616

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
HASSAN KIZOU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments see pages 9-12 of the Remarks section, filed 11/13/2006, with respect to the rejections of the claims have been fully considered and are not persuasive. Applicant argues, (page 9 paragraph 4) that Davidson and Pace, even when combined, fail to disclose, expressly or inherently, "determining that noise is transmitted; in response to the determination, sending a notice of the transmitted noise; receiving the notice of transmitted noise; and in response to the notice, granting priority to an outgoing signal over the transmitted noise." Applicant further argues silence is not transmitted noise.

However, examiner respectfully disagrees with these assertions. The present claim language is broad and in view of the broadest reasonable interpretation of the claim language, Davidson does teach the cited limitations. The Examiner respectfully points out in the Applicant's specification (page 14 lines 13-26) where it states "non-linear processing block 36 transmits a notice signal 39 to IP phone 14 through notice signal path 40 at any time between receiving reduced echo signal 27 and transmitting masked echo signal 37. Notice signal 39 may indicate the production and/or transmission of masked echo signal 37, or insertion of comfort noise 35". It appears that the "transmitted noise" applicant is referring to is "masked echo signal 37, or insertion of comfort noise 35". Davidson in column 3 lines 52-65 teaches "Accordingly, to provide for comfort noise, the BS receives the "silence" information from a terminal device and uses these samples of silence to take the place of what would otherwise be speech samples. These samples are converted into voice data items, and are then placed in the payload portion of IP packets or ATM cells and are sent across the mobile communications network. Unfortunately, because it can take as much payload to transfer silence as it does to transfer actual voice communication, there is a high price to pay for the transport of this "silence"-- a tremendous amount of processing (approximately 40%, and as much as 60%, of a mobile communications network processing effort) is spent transferring silence (or comfort noise). Examiner respectfully points out the last line where Davidson teaches, "...transferring silence (or comfort noise)". So, in view of the broadest reasonable interpretation of the claim language, Davidson does teach transmitting silence or comfort noise. Further "determining that noise is transmitted; in response to the determination, sending a notice of the transmitted noise; receiving the notice of transmitted noise" is also taught by Davidson in column 6 lines 42-54, where he states The present invention generally identifies silence (or, a level of sound existing below some threshold) (i.e. noise) in an uplink communication channel linking a terminal device to a MGW, which could be a TCN, and provides for the reproduction of equivalent silence, or comfort noise, in a destination terminal. More specifically, the present invention detects the occurrence of silence in an uplink communication channel, either directly or as a SID code, and then transmits a silence indicator, such as a Network SID." Further, Pace does teach giving priority to the outgoing signal over transmitted noise (transmitted from the other side). Pace teaches in response to the notice (column 1 lines 28-30, in response to a control signal supplied from the control circuit), granting priority to an outgoing signal over the transmitted noise (column 1, lines 34-37, the transmit attenuator is operated at maximum gain while the receive attenuator is operated at maximum attenuation to inhibit a receive signal). Pace teaches (column 1, lines 34-37) the transmit attenuator is operated at maximum gain while the receive attenuator is operated at maximum attenuation to inhibit a receive signal). Pace further suggests (column 1 lines 14-15) the automatic control of attenuator circuits is frequently required in the design of telephones and other audio products. Davidson teaches his invention using a mobile phone 110, which could be any terminal device (Figure 1). As such Davidson's mobile phone uses attenuator as per Pace's teaching (column 1 lines 14-15). The Examiner respectfully points out that the above description provides appropriate evidentiary support of Examiner's position.

Examiner respectfully disagrees with the applicant (see page 9 last line) that Davidson clearly defines silence as no noise at all. Examiner points out in Davidson reference column 6 lines 42-54, he states "The present invention generally identifies silence (or, a level of sound existing below some threshold) (i.e. noise) in an uplink communication channel".

Applicant argues that (page 10 paragraph 5) Davidson clearly only detects silence. Therefore, when Davidson is combined with Pace, the combination, at the most, merely discloses detecting silence and attenuating an outgoing or incoming signal over the silence. However, Examiner respectfully disagrees with the assertion. Examiner respectfully points out column 6 lines 42-54, where Davidson states The present invention generally identifies silence (or, a level of sound existing below some threshold) (i.e. noise) in an uplink communication channel.

As such, the Examiner respectfully, disagrees with the Applicant that Independent Claim 1 and its dependents should be allowed and independent Claims 9, 15, and 23 and their dependents should be allowed for analogous reasons.

Applicant argues (page 11, paragraph 2) PTO in establishing a prima facie rejection must (1) establish the rejection based on the disclosure of Nayak, and (2) include a showing of support in a provisional application to which Nayak claims priority. See M.P.E.P. §706.02, Example 2 and M.P.E.P. §2136.03. Examiner respectfully submits that provisional application 60/297265 and 60/305157 in their specification and drawing contain proper support to which Nayak claims priority.

Applicant argues that (page 11 paragraph 3) independent Claim 27 is allowable because the proposed combination of Nayak and Beyda would render Nayak "unsatisfactory for its intended purpose." Clearly, one would not be motivated to combine references in a manner that would make the references unsatisfactory for their intended purpose. Accordingly, there is no suggestion or motivation to make the proposed combination. Applicant further argues, (page 12, paragraphs 1-2) that the proposed combination renders Nayak inoperable for its intended purpose of "managing communication impairments between an Internet Protocol phone and an Internet Protocol device." Applicant adds Beyda teaches a request for a speaker-phone, such a request would cause the call to be removed from an Internet Protocol routing, thereby rendering Nayak inoperable.

However, Examiner respectfully disagrees with the assertion. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art at the time the invention was made. See *In re Keller* 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Rigid prophylactic test is not needed to implement Section 103(a)'s nonobviousness requirement. Teaching-Suggestion-Motivation Test Should Not Be The Exclusive Means Of Establishing Obviousness. There may be differences between respondent's invention and the state of the prior art. The gap between the prior art and respondent's system is simply not so great as to render the system nonobvious to one reasonably skilled in the art." *Id.* at 230. (No. 04-1350 In the Supreme Court of the United States *KSR INTERNATIONAL CO., PETITIONER v. TELEFLEX INC., ET AL*). As such Examiner respectfully disagrees with the Applicant's assertion that independent claim 27 and its dependent claims are allowable.

In regards to paragraph 4 of page 12, the Examiner respectfully submits that the above descriptions in conjunctions with cited references provides appropriate evidentiary support of Examiner's position..